IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 360 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL LAXMICHAND KASHIRAM
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR RJ GOSWAMI for the Petitioner
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
MR H.S.MULIA for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/11/2006

ORAL JUDGMENT

1. Petitioner – original complainant is before this Court being aggrieved by order dated 21.06.2003 passed in

Criminal Inquiry Case No.5 of 2002 by the the learned Judicial Magistrate First Class, Mehsana, ("JMFC", for short) whereby the learned JMFC was pleased to grant "C" Summary in favour of accused No.4, who is respondent No.2 herein and was pleased to discharge accused No.4 for the alleged offence under Sections 465, 467, 468, 469, 471, 474 and 120(b) of the Indian Penal Code.

2. The facts of the case are that the present applicant – original complainant filed a complaint on 25.01.2002 for the offence under Sections 465, 467, 468, 469, 471, 474 and 120(b) of the Indian Penal Code. The same was sent for investigation under Section 156(3) of the Criminal Procedure Code. The Investigating Officer after investigation filed a report seeking "C" Summary. The complainant was heard on the said report.

3. It is the case of the complainant that accused taking advantage of a marriage occasion in his family, obtained his signature on a blank stamp paper, with a view to deprive him of the property. Accused No.3 though knew the complainant, issued a stamp paper in the name of the complainant to accused No.1 and accused No.4 registered the same illegally (accused No.4 is an advocate, who is also appointed as a Notary).

4. Mr.R.J.Goswami, learned advocate for the petitioner

vehemently submitted that there is a statement of one Shri Devendrakumar Chandulal Nayak, who was serving as clerk at the relevant time in the office of accused No.4 – respondent No.2 herein. He has categorically stated in his statement that, accused No.4 – respondent No.2 herein made him to write 'H.R.Panchiwala' in English and to underline the same and then to write 'H.R.Panchiwala' in Gujarati, in a bracket below the first writing. He has explained his act by saying that he was told by accused No.4 that as Mr.H.R.Panchiwala is sick, he (accused No.4) is going to visit him at Patan and at that time, he (accused No.4) will obtain Mr.H.R.Panchiwala's signature. He has further stated that, later on, he learnt that some litigation has arisen and his writing in English (H.R.Panchiwala) is misused as the signature of Shri H.R.Panchiwala by writing “Before me”, “Identified by me” and by notarization. He has also stated that he did not have any wrong intention in carrying out the instructions of accused No.4. He has further stated that, this statement he is giving without being under pressure of anybody and being fully conscious about the same.

5. Mr.Goswami, learned advocate for the petitioner also pointed out a statement of one Shri Abheysinh Umedsinh Thakor, who has stated that he is a practicing advocate for last about 15 years in the Court at Patan; that he

knew well Late Shri Hemantkumar Ramanlal Panchiwala (H.R.Panchiwala) as he had worked with him for 7 to 8 years and that he is able to identify the signature of Shri H.R.Panchiwala. He too has stated that the signature on the document is not the signature of Shri H.R.Panchiwala.

6. Learned advocate Mr.Goswami next invited attention of the Court to the statement of one Shri Revabhai Bababhai Solanki, who was junior to Late Shri Hemantkumar Ramanlal Panchiwala himself (H.R.Panchiwala). This advocate has also stated that, he knows the signature of Late Shri H.R.Panchiwala and that the signature on the document in question is not that of Late Shri H.R.Panchiwala.

7. Last but not the least, learned advocate Mr.Goswami invited attention of the Court to statement of Smt.Jashodaben, wife of Hemantkumar Ramanlal Panchiwala. But then, she has stated that she will not be able to state as to whether the signature in the document in question is that of her husband or not. She has stated that her husband was admitted for treatment on 26.04.1999. Later on, he was shifted to Ahmedabad where he expired on 01.05.1999.

8. Learned advocate Mr.Goswami submitted that the

learned Magistrate has committed an error in granting “C” Summary in favour of accused No.4 – respondent No.2 herein on the ground that, 'the act of registering a document is a part of discharge of his duties as a 'Notary' and therefore, without obtaining sanction from the Government, the present petitioner – original complainant could not have filed a complaint against accused No.4.

Learned advocate Mr.Goswami submitted that forging a document can never be an act of discharging of official duty by a Notary. He submitted that the case of the complainant is that accused No.4 forged the signature of Late Shri H.R.Panchiwala. This signature is forged to bring an effect that Late Shri H.R.Panchiwala identified the person who executed the document. The official duty of a Notary is to 'notarize' a document and not to forge any signature, either of the executor of the document or of the advocate who signs the document stating that he identifies the executor of the document. He submitted that therefore, the learned JMFC has committed an error in granting “C” Summary to accused No.4

9. In the alternative, learned advocate Mr.Goswami submitted that the learned JMFC ought to have asked the parties to produce original document and then the learned

JMFC should have obtained the opinion of Handwriting Expert. It would have been safe to act upon the opinion of the Handwriting Expert. In light of the aforesaid four statements, including that of the clerk of accused No.4 and a junior of Late Shri H.R.Panchiwala, the opinion Handwriting Expert is a must. He submitted that later on, accused No.4 obtained an affidavit of the wife of Late Shri H.R.Panchiwala, which is relied upon by the learned JMFC without taking into consideration the statements aforesaid.

10 Mr.H.S.Muliya, learned advocate for respondent No.1 vehemently opposed the revision application and submitted that the order passed by the learned JMFC is absolutely in accordance with law and the act of accused No.4 – respondent No.2 herein is nothing beyond discharge of his official duties.

11. Taking into consideration the submissions made by learned advocate Mr.Goswami, for the petitioner, this Court is of the opinion that the interest of justice would be served if the order passed by the learned JMFC dated 21.06.2003 is quashed and set aside and the matter is remanded to the learned JMFC for proceeding further in the matter.

Accordingly, order dated 21.06.2003 passed by the

learned JMFC in Criminal Inquiry Case No.5 of 2002 is quashed and set aside. The matter is remanded to the learned JMFC for proceeding further in the matter and pass appropriate orders. The learned JMFC shall direct the concern party to produce the original document on record. Once it is on record, the Handwriting Expert's opinion be sought for so that the same can be appreciated by the learned JMFC to serve ends of justice.

12. The Revision Application is allowed. Rule is made absolute.

(RAVI R.TRIPATHI, J.)

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